



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Ordinance No. 1861 Entitled, "An Ordinance of the City Council of the City of Lodi Rescinding Development Agreement Pertaining to the Development of 257.76 Acres Located on the West Side of Lower Sacramento Road Between Highway 12-Kettleman Lane and Harney Lane (Southwest Gateway) (Development Agreement GM-05-001)"

MEETING DATE: September 19, 2012

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1861.


BACKGROUND INFORMATION: Ordinance No. 1861 entitled, "An Ordinance of the City Council of the City of Lodi Rescinding Development Agreement Pertaining to the Development of 257.76 Acres Located on the West Side of Lower Sacramento Road Between Highway 12-Kettleman Lane and Harney Lane (Southwest Gateway) (Development Agreement GM-05-001)," was introduced at the regular City Council meeting of August 15, 2012.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. **Cal. Gov't Code § 36934.**

Ordinances take effect 30 days after their final passage. **Cal. Gov't Code § 36937**
This ordinance has been approved as to form by the City Attorney.

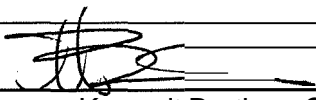
FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.



Randi Johl
City Clerk

RJ/jmr
Attachment

APPROVED: 

Konrad Bartlam, City Manager

ORDINANCE NO. 1861

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI
RESCINDING DEVELOPMENT AGREEMENT PERTAINING TO THE
DEVELOPMENT OF 257.76 ACRES LOCATED ON THE WEST SIDE OF
LOWER SACRAMENTO ROAD BETWEEN HIGHWAY 12-KETTLEMAN LANE
AND HARNEY LANE (SOUTHWEST GATEWAY)
(DEVELOPMENT AGREEMENT GM-05-001)

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. The Lodi City Council passed Ordinance No. 1788 approving a Development Agreement covering the following property:

Southwest Gateway: 257.76 acres located on the west side of Lower Sacramento Road between Highway 12-Kettleman Lane and Harney Lane, Assessors Parcel Numbers: 058-030-09, 058-030-03, 058-030-04, 058-030-05, 058-030-06, 058-040-01, 058-040-02, 058-040-04, 058-040-05, and 058-040-14.

SECTION 2. Frontier Community Builders ("Frontiers"), the sole party to the above referenced Development Agreement, requested that the agreement be rescinded by letter of May 16, 2012, a copy of which is attached hereto and incorporated by reference. However, Frontiers, Citizens for Open Government and the City entered into a settlement agreement dated November 15, 2006 ("Settlement Agreement"), the obligations of which were incorporated into the Development Agreement and into the CEQA approvals set forth in Resolution 2006-209. This ordinance shall not terminate any of the obligations set forth in the Settlement Agreement. Moreover, CEQA Resolution 2006-209 shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 3. The City Council hereby finds that termination of the Development Agreement is in the best interest of the City to ensure that any construction is subject to the new impact mitigation fee program, and to eliminate conditions in the Development Agreement that could present barriers to housing construction in the current economy.

SECTION 4. The City Council hereby finds that the termination of the Development Agreement is consistent with the General Plan land use designation and the zoning for the proposed Development.


SECTION 5. The City Council hereby adopts Ordinance No. 1861 rescinding the Development Agreement by and between the City of Lodi and Frontier Community Builders. However, the Settlement Agreement and CEQA Resolution 2006-209 shall continue in full force and obligate Frontiers to comply with all of the obligations set forth in the Settlement Agreement.

SECTION 6. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer for employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.


SECTION 7. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 8. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 19th of September, 2012


JOANNE MOUNCE
Mayor

Attest.


RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1861 was introduced at a regular meeting of the City Council of the City of Lodi held August 15, 2012, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held September 19, 2012, by the following vote:

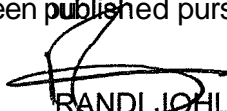
AYES: COUNCIL MEMBERS – Johnson, Katzakian, Nakanishi, and Mayor Mounce

NOES; COUNCIL MEMBERS – None


ABSENT: COUNCIL MEMBERS – Hansen

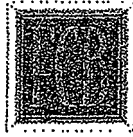
ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1861 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.


RANDI JOHL
City Clerk

Approved as to Form:


D. STEPHEN SCHWABAUER
City Attorney



FCB HOMES

May 16, 2012

Mr. Rad Bartlem
City Manager
City of Lodi
221 West Pine Street
Lodi, CA 95240

Re: Westside and Southwest Gateway Development Agreements -
Request for Termination

Dear Rad,

Last April, 2011, I sent you a letter formally requesting termination of the Westside and Southwest Gateway Development Agreements (see attached). The letter followed nearly ten **months** of regular meetings **with** City Staff and their consultants **working** on Lodi's Impact Mitigation Fee **Program** (IMFP) update. We were convinced then that the Westside **and** Southwest Gateway properties should be included in the IMFP **and** the Development Agreements terminated. Now, over a **year** later, the **IMFP** update is nearly complete, and the Westside **and** Southwest Gateway properties are an integral part of the updated IMFP. Clearly, then, it is time to move forward to cancel the old Westside and Southwest Gateway Development Agreements and establish an economic framework for residential development to proceed within **the** current City limits.

At your request, I will outline below the main reasons **we** feel the Development Agreements should be cancelled.

1. The Development Agreements did not address the actual impacts resulting from **new** residential development.

When the Westside **and** Southwest Gateway projects were moving through the entitlement process, the City's **existing** impact fee program - originally adopted in 1991 - had not been updated for 15 years. While the fees had been periodically increased over time, *many* of the underlying assumptions about program **funding** had changed and it was those old fee programs that provided the **basis** for the Agreements. Furthermore, other fees were included in the Agreements, some of which bore little or no relationship to growth impacts from the Westside and Gateway projects.

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209-957-8112 FAX 209-957-3618 WWW.FCBHOMES.COM



Now, nearly six years later, the City has the cumulative benefit of precise plans for the Westside and Southwest Gateway and a new General Plan. The City's Staff is also approaching the end of a two year comprehensive study of growth impacts via the IMFP which include the Westside and Southwest Gateway properties. Their work, along with the Council's ultimate approval, will result in an updated, tailored IMFP. The new IMFP will be a far better and more accurate way to mitigate impacts from both the Westside and Gateway projects in comparison to the mitigation sought by the Agreements.

2. The Development Agreements have a fifteen year term, were never implemented and cannot be completed before they expire.

The national, state and local housing markets were at historic levels when the Development Agreements were approved in 2006. The fifteen year term of the Agreements seemed reasonable at the time given the active market conditions. However, the market has since plummeted to historic lows. Furthermore, City Staff, consultants, and developers are not expecting new residential development to even begin for another two to three years. By that time, the Development Agreements will only have approximately seven years remaining before they expire. This is less than half the time that was deemed appropriate under the best of market conditions and will simply not be sufficient time to complete these projects. At a minimum, the Development Agreements need to be renegotiated to account for this fact alone. However, as noted, it would be more accurate and efficient to put the entire City under one (updated) IMFP. Having to renegotiate the Development Agreements, regularly monitor compliance, and account for all funds and programs separate from the IMFP would be time consuming and an unnecessary financial burden for everyone involved.

3. The Development Agreements required predetermined lump sum payments for certain fees that cannot be financed without a robust and consistent housing market.

Historically, the City's IMFP has been designed to be a "pay-as-you-go" system. This allowed the pace of development to mirror the acceleration or decline of the housing market. The proposed updated IMFP will likewise operate on a "pay-as-you-go" basis. This is a more sustainable way to manage growth, particularly in a community like Lodi - where the long term residential growth rate is relatively slow. Development in Westside and Southwest Gateway will likely occur in phases by multiple development interests. While this is consistent with how development in Lodi has occurred for many years, it makes the payment of large, lump sums on a predetermined schedule virtually impossible to finance.

Development Agreements with lump sum payments work best on large scale projects expected to be completed in a predictable fashion. They can even work effectively on small projects when the completion can be reasonably forecasted. However, in a community like Lodi, this structure will not work effectively on larger scale areas of development over longer (less economically predictable) periods of time.

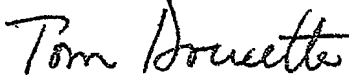
Summary

While the issues outlined above are not exhaustive, they highlight several important factors which underscore the need to terminate the Westside and Southwest Gateway Development Agreements. Alternatively, these Development Agreements could be renegotiated, but that should be weighed against the inclusion of these projects in the updated **IMFP** program.

The Agreements were executed during an unprecedented "Housing Bubble" fueled by the "Irrational Exuberance" of a dysfunctional financial system. These dynamics no longer exist and will not return in our lifetime. The housing market, as well as the overall economy, is struggling to find its footing following one of the worst recessions in history. Fortunately, the City has moved on and set a course to plan for sustainable future growth base on realistic assumptions.

The Westside and Southwest Gateway projects will be a major component of the City's planned growth plans for the next ten to fifteen years. With this in mind, it is our belief that it will be more efficient, balanced and productive to utilize the updated **IMFP** for the Westside and Southwest Gateway projects once it is adopted by the City Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Doucette". The signature is fluid and cursive, with a large initial "T" and "D".

Thomas P. Doucette
President